

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MIKELL P. SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-04-1701-HE
)	
RON WARD, <i>et al.</i> ,)	
)	
Defendants.)	

Report and Recommendation

The Plaintiff, Mikell P. Smith, sued but then filed a motion to dismiss without prejudice. The motion should be granted.


“When considering a motion to dismiss without prejudice, ‘the important aspect is whether the opposing party will suffer prejudice in the light of the valid interests of the parties.’” *Clark v. Tansy*, 13 F.3d 1407, 1411 (10th Cir. 1993) (citation omitted); *see also Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir. 1997) (“Absent ‘legal prejudice’ to the defendant, the district court normally should grant . . . a dismissal [under Fed. R. Civ. P. 41(a)(2)].” (citations omitted)). Through the Court Clerk’s Office, the Defendants state that they consent to the Plaintiff’s motion, which forecloses any finding of prejudice from voluntary dismissal. Accordingly, the Court should grant the Plaintiff’s motion and dismiss the action without prejudice. *See* Fed. R. Civ. P. 41(a)(2).

The parties are advised of their right to object to this report and recommendation by May 20, 2006. *See* 28 U.S.C. § 636(b)(1); W.D. Okla. LCvR 72.1(a). Any objection must be filed with the Court Clerk for the United States District Court, Western District of

Oklahoma. The failure to timely object waives one's right to further review by the Tenth Circuit Court of Appeals. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation disposes of all matters referred to the undersigned in the present action.

Entered this 28th day of April, 2006.



Robert E. Bacharach
United States Magistrate Judge